

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

NATHANIEL JEROME McCLUNG,

§
§
§
§
§
§
§
§

Plaintiff,

v.

CIVIL ACTION NO. 6:12-cv-953

DYNCORP INTERNATIONAL LLC,

Defendant.

§
§
§
§
§
§
§

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES
MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation (Doc. No.28) recommends that the claims of Mr. McClung be dismissed without prejudice. Defendant received the Report and Recommendation electronically on January 28, 2014. The Report and Recommendation was mailed to Plaintiff, via certified mail, return receipt requested. It was returned as "unclaimed" on February 25, 2014 (Doc. No.30). The return shows that delivery was attempted on February 4, 2014, February 10, 2014, and February 20, 2014.

On February 7, 2014, Defendant submitted an Objection to the Report and Recommendation (Doc. No. 29). Defendant agreeu that the case should be dismissed but argueu that it should be dismissed with prejudice due to Plaintiff's refusal to participate. Doc. No. 29 at 1.

Dismissal with prejudice “is an extreme sanction that deprives a litigant of the opportunity to pursue his claim.” *Gonzalez v. Firestone Tire & Rubber Co.*, 610 F.2d 241, 247 (5th Cir. 1980). In this case it appears a lesser sanction would better serve the interests of justice. Defendant’s grievances are mainly directed at Plaintiff’s failure to participate in the discovery process. But Plaintiff doesn’t appear to have acted out of a stubborn resistance to authority. Instead, he is a *pro se* plaintiff who seems to have lost any interest in pursuing his case. If this is the situation, Plaintiff should have filed a notice of voluntary dismissal. While Plaintiff’s conduct was clearly not appropriate, dismissal without prejudice is a fitting sanction.

Having made a *de novo* review of the written objections filed by Defendant, the findings and conclusions of the Magistrate Judge are correct. The Court, therefore, adopts the findings and conclusions of the Magistrate Judge as those of the Court.

In light of the foregoing, it is

ORDERED that Plaintiff’s complaint is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

So ORDERED and SIGNED this 4th day of March, 2014.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**